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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1906.

AUGUSTA A. PETERSON AND IDA PETERSON, A MINOR, *Plaintiffs in Error*,
v.
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, *Defendant in Error*.
} No. 225.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

ARGUMENT FOR THE DEFENDANT IN ERROR.

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STATEMENT.

This action was commenced in July, 1904, in the Circuit Court of the United States for the Northern District of Texas, to recover damages for the death of John Peterson, who died from injuries sustained by him at Chickasha, Indian Territory, while in the service of the defendant in error as locomotive engineer. It is alleged in the petition that the plaintiffs are

citizens of the State of Texas, and that the defendant, hereinafter called the Rock Island Company, is incorporated under the laws of the State of Illinois, and that it owned and operated as a common carrier of freight and passengers a line of railway extending from Chicago, Illinois, through the Indian Territory to the south line thereof on the Red River. That it also "operated and now operates The Chicago, Rock Island & Gulf Railway Company, a corporation duly and legally incorporated and organized under the laws of the State of Texas, in connection with said Rock Island Company, which Chicago, Rock Island & Gulf extends from said Red River through various counties in the State of Texas to the City of Ft. Worth, in Tarrant County, Texas; that said lines of railway connect with each other at Red River and form a continuous line of railway from Chicago to the City of Ft. Worth."

It is further stated in the petition that the Rock Island Company and The Chicago, Rock Island & Gulf Railway Company, hereinafter called the Gulf Company, are engaged in operating said lines of railway as a single system and as a single line, known and advertised by them as the "Rock Island System"; that while said companies were separately incorporated, they are in fact substantially one company, owned and operated by said companies as parts of the same system; that in operating said lines said companies are acting together as partners and agents of each other; that the Rock Island Company is the dominant and

parent company or corporation; that the Gulf Company is a subordinate and ancillary corporation, organized and incorporated by and at the instance of the Rock Island Company, as a joint agency through which to enable it to extend and operate its line of railway into the City of Ft. Worth; that the Gulf Company is completely dominated and controlled by the Rock Island Company; that the Rock Island Company transacts its business in Texas through and from the general offices, and through and by the general officers and local agents of the Gulf Company. That while the officers and local agents of the Gulf Company are employed ostensibly by it, they are in reality acting for the Rock Island Company and for that system. That the Rock Island Company is thus engaged in doing business in the State of Texas and has offices and local agents in the State. That S. B. Hovey, who resides in Tarrant County, Texas, is Vice-President and General Manager of the Gulf Company, and is also General Manager and Local Agent in Texas of said Rock Island Company; that F. E. Merrell, who resides in Fort Worth, Texas, is the Local Agent in that county for both companies, and for said system; that the First Division of said system going north extends from Ft. Worth to the City of Chickasha, Indian Territory, and that M. E. Sebree, who resides, and has his office, in Tarrant County, Texas, is the Trainmaster of said division, and is a Local Agent in Texas for said defendant.

On the day on which the petition was filed citations

were issued requiring the marshal to summon S. B. Hovey, Vice-President and General Manager of the Gulf Company, and General Manager and Local Agent of the Rock Island Company, F. E. Merrell, Local Agent in Tarrant County, Texas, for the Rock Island Company and the Gulf Company, and M. E. Sebree, Trainmaster of the First Division of the Gulf Company and the Rock Island Company, and Local Agent in Texas. In these citations it was represented that the Rock Island Company and the Gulf Company, while separately incorporated, are substantially one company, and owned and operated as one company, as shown in plaintiffs' petition.

These citations having been returned duly served, the Rock Island Company, appearing specially for that purpose, moved to quash the service on the ground that none of the persons named in the summons was at the time of such service either the President, Vice-President, Secretary or Treasurer, or the General Manager or Local Agent of said defendant, and that the Rock Island Company was a foreign corporation and not incorporated under the laws of the State of Texas.

This motion to quash was supported by the affidavit of S. B. Hovey, to the effect that he was not at the time of the service, or at any other time, either the General Manager or Local Agent, or the President, Vice-President, Secretary or Treasurer of the Rock Island Company; by the affidavit of F. E. Merrell, to the effect that he was not the Local Agent, nor any character of agent

of the Rock Island Company, and the affidavit of M. E. Sebree that he was not President, Secretary, Treasurer or General Manager, or the Local Agent within the State of Texas of the Rock Island Company.

At the time of the filing of the petition and the service of summons upon said parties as hereinbefore stated, the following statutes were in force in the State of Texas, providing where and how suits might be brought against foreign corporations and citations served thereon:

References are to Sayles' Texas Civil Statutes.

Art. 1194, Sec. 25. *Foreign, private or public corporations, etc.* Foreign, private or public corporations, joint stock companies or associations, not incorporated by the laws of this state, and doing business within this state, may be sued in any court within this state having jurisdiction over the subject matter, in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or when the defendant corporation has no agent or representative in the state, then in the county where the plaintiffs or either of them reside.

Art. 1223. Foreign corporations, how served.

In any suit against a foreign, private or public corporation, joint stock company or association or acting corporation or association, citation or other process may be served on the president, vice-president, secretary or treasurer, or general manager, or upon any local agent within this state, of such corporation, joint stock company or association, or acting corporation or association.

By sections 2 and 3 of an act of the Legislature of Texas, approved March 13th, 1905, General Laws of Texas, 1905, page 30, an additional method of serving citation upon foreign corporations was provided. Said sections are as follows:

SEC. 2. That service may be had on foreign corporations having agents in this state in addition to the means now provided by law by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations, whether said railroad corporations are foreign or domestic corporations, if said conductor handles trains over foreign or domestic corporations' track across the state line of Texas, and on the track of a domestic railway corporation within the state of Texas, or upon any agent who has an office in Texas, and who sells tickets or makes contracts for the transportation of passengers or property over any line of railway or part thereof, or steamship or steamboat of any such foreign corporation or company.

SEC. 3. For the purpose of obtaining service of citation on foreign railway corporations, conductors who are engaged in handling trains and agents engaged in the sale of tickets or the making of contracts for the transportation of property as described in Sec. 2 of this act, are hereby designated as agents of said foreign corporations or companies upon whom citation may be served.

On October 4th, 1905, plaintiffs caused an additional summons to be issued against the Rock Island Company, requiring the marshal to summons it by serving A. L. Thomas and V. N. Turpin. It was represented in the summons that Thomas was a conductor, and Turpin a ticket agent, and that both were agents and rep-

resentatives of the Rock Island Company, and resident citizens of Tarrant County, and that the Rock Island and Gulf Companies, while separately incorporated, are substantially one company, and owned and operated as one company, as shown by the plaintiffs' original petition. After the service of this summons, the Rock Island Company, appearing specially for that purpose, moved to quash the service, it being agreed by counsel that the two motions might be considered as an amended motion; and as ground for such motion, it was alleged that said V. N. Turpin was not at the time of the service of the citation, nor at any other time since the institution of the suit, an agent or employe of any kind or character of the Rock Island Company, and that said A. L. Thomas was not at the time of service of the citation, nor at any other time since the filing of the suit, an agent or employe of any kind of the Rock Island Company in Texas. It was further alleged in the motion that the service of citation upon these two parties was an attempt to obtain service on the Rock Island Company under the provisions of said Act of 1905, and that said statute is insufficient to sustain a personal judgment, in that it is not personal service on the defendant, as it provides for service of citation on persons not employed by the defendant, and who are not in fact agents of the defendant.

This motion was supported by the affidavit of A. L. Thomas, to the effect that he was not at the time of the service of citation on him, and had not at any time

since the institution of this suit been an agent or employe of The Chicago, Rock Island and Pacific Railway Company, further than that he had been for a number of years a passenger conductor residing at Ft. Worth, Texas, and running over the line of road of the Gulf Company and the Rock Island Company Between Ft. Worth and Caldwell, Kansas; that he was employed by each company while running on its line of road, and paid by each company for the service rendered it; that he ran from Ft. Worth, Texas, to the Texas state line upon the line of the Gulf Company, and from the Texas state line to Caldwell, Kansas, over the line of the Rock Island Company.

The affidavit of V. N. Turpin filed in support of said motion states that he was not at the time of the service of citation, and has not at any time since been an agent or employe of any kind or character for the Rock Island Company. Further than that he is and has been for a long time the ticket agent of the Gulf Company in Ft. Worth Texas, and that in the performance of his duties as such he has sold, and customarily sells, tickets good for passage over the line of the Gulf Company and any other connecting line which the purchaser desires to travel over, that he has thus sold tickets over The Chicago, Rock Island and Gulf, and The Chicago, Rock Island and Pacific Railway Companies' lines.

On the hearing of these motions to quash, an agreed statement of facts was submitted (Record, 22) which in substance shows that the Rock Island Company, a

corporation chartered under the laws of Illinois and Iowa in the year 1892, owned and operated a line of railway extending from the city of Chicago, Illinois, in a southwesterly direction to the north boundary line of the State of Texas. In the same year the Chicago, Rock Island and Texas Railway Company, hereinafter called the Texas Company, was organized under the laws of Texas, with an authorized capital stock of three million dollars. Seven hundred fifty-four shares of its stock were subscribed at the time of its organization. Of the corporators, six who subscribed one share each had never been connected with the Rock Island Company. One other who subscribed one share had been in the employ of the Rock Island Company in securing right of way. M. A. Low, who subscribed seven hundred forty-five shares, was one of the General Attorneys, and W. F. Evans, who subscribed one share, was Assistant General Attorney, and C. F. Jilson was Assistant Treasurer of the Rock Island Company.

Under its charter and amendment thereto the Texas Company was authorized to construct its line from the north line of Texas to Tarrant County, in which is situated the city of Fort Worth. This line at its northern terminus connected with the southern terminus of the line of the Rock Island Company at the line between Texas and the Indian Territory, which was situated in the center of Red River.

In January, 1893, the Texas Company and the Rock

Island Company entered into an agreement (Record, 31) in which it was recited that the Rock Island Company owned and operated, among other lines, a line of railway extending from the City of Chicago, Illinois, to the south line of the Chickasaw Nation, Indian Territory, where it connected with the railway of the Texas Company, and that the Texas Company owned and operated a railway from the point of connection of the railway of the Rock Island Company on the line between the State of Texas and the Indian Territory, and extending thence south into the city of Bowie, Texas, which line it proposed to extend, and that it desired to raise money to be applied to such construction by the sale of its first mortgage bonds, and that it also desired to make a permanent arrangement with the Rock Island Company for the exchange of traffic. In section two of Article 1 of this agreement it was declared to be the purpose of the parties, by the execution of the agreement, to establish and operate through lines of railway which should connect when the same could be done with reasonable directness, all points on the lines of both of the parties thereto treating all railroads with which either party shall have traffic or running arrangements, or in which it shall have any leasehold interest, as a part of the line of the party hereto with which it is so related, and to secure the operation of all said lines as to through traffic, as they should be operated if all were owned by one corporation. By Article 2 of the agreement,

the Rock Island Company agreed to purchase the bonds of the Texas Company as offered to it to an amount not exceeding fifteen thousand ($15,000) dollars per mile of railway actually constructed by the Texas Company, and also to purchase a limited number of bonds issued to pay for equipment. By section two of the same article it promised, so far as it lawfully could, to give to the Texas Company all westbound traffic which it might receive for transportation to any points which could with reasonable directness be reached over lines composed in whole or in part of portions of the railways of the parties thereto. It also agreed that it would furnish freight cars for the transportation of through traffic as nearly as practicable in the proportion of its mileage to the entire mileage over which such traffic should be moved between the point where it shall be received on the railways of the parties hereto and the points of destination or delivery to connecting carrier. By Article 3 the Texas Company agreed, so far as it lawfully could, to deliver to the Rock Island Company at the most accessible or most convenient point all eastbound traffic which could be reached with reasonable directness by a line composed in whole or in part by a portion of the railways thereto, and that it would furnish freight cars for the transportation of through traffic as nearly as practicable in the proportion of its mileage to the entire mileage over which such traffic should be moved between points on the lines of the parties to the contract.

By Article 4 the parties mutually agreed that each would construct and maintain its railway and appurtenances in such condition as would enable it to promptly and safely transport and deliver through traffic. Sec. 4 of Article 4 provided that "each party shall control the movements of traffic on its own railways, and defray all expenses which may be incurred in moving and handling the same while under its control." In the following sections provision was made for time schedules for running through passenger, freight and express trains, it being expressly provded that in making such schedules the convenience of all parties must be regarded and that either party's trains should not be so arranged as to connect with any train operated by either one of the parties on its own railway to the serious prejudice of the other party. Section 9 of this article provided that each party should furnish its proportion of the cars for the transportation of through traffic and that the party furnishing in excess of its proportion should be entitled to compensation for such excess at the rates usually allowed for car service, and that on request the Rock Island Company would furnish the Texas Company equipment for its passenger trains, receiving therefor the compensation usually allowed at the time in the State of Texas for such use. Section 10 contained the usual provision in contracts for the interchange of freight traffic, that damage to persons or property in transit over through lines should be paid by the party upon whose railway the damage shall oc-

cur when known, and when unknown, by both parties in proportion to the division of the charge for transportation thereof. Section 12 provided that each party would furnish power to move freight over its own tracks. S. B. Hovey testified (Record, 50) that this contract was cancelled by the directors of the two companies in 1903, before the property of the Texas Company was sold to the Gulf Company as hereinafter stated. And Exhibit "B" (Record, 36-37) indicates that by agreement of said companies said contract was, on the 14th day of April, 1903, cancelled, and each party thereto was fully released from every obligation contained therein.

After the Texas Company had constructed its line it issued first mortgage bonds to the extent of $15,000 per mile, and these bonds were purchased by the Rock Island Company at par. The railway of the Texas Company cost a large sum of money in excess of the amount for which it issued bonds. This additional cost was paid by application of money subscribed by stockholders and by borrowing from the Rock Island Company, which money so borrowed had long before the institution of this suit been returned with interest. (Record, 24.) In 1893 S. B. Hovey, who was served with citation in this case, was elected Vice-President of the Texas Company and continued as Vice-President and Superintendent thereof from that date until its property was sold to the Gulf Company in 1903. M. E. Sebree, who was served with a citation in this case,

was, for a number of years, and until the sale of the property of the Texas Company to the Gulf Company, Trainmaster of the Texas Company and Assistant Trainmaster of the Rock Island Company, with jurisdiction on the Rock Island line to Chickasha, Indian Territory. M. A. Low, of Topeka, Kansas, was President of the Texas Company from the time of its organization until the 8th day of November, 1900, during which time he was one of the General Attorneys of the Rock Island Company. Prior to the sale of its property, the Texas Company had never issued equipment bonds, but it had purchased between 1,000 and 1,200 freight cars of various kinds, and during that time had rented rolling stock from various companies, but principally from the Rock Island Company, and had paid therefor prices prevailing between other lines in the State of Texas. (Record, 25.)

After the Texas Company had constructed its line into Fort Worth, and after the execution of the traffic contract hereinbefore referred to, most of the passenger and freight trains running over the line of the Texas Company from Red River to Fort Worth and from Fort Worth to Red River were operated beyond its line as trains of the Rock Island Company, the employes of these trains being under the control and paid by the Texas Company while working on its line, and under control and paid by the Rock Island Company while on its line. (Record, 25.) When necessary the Texas Company operated local freight trains between

Fort Worth and Red River, but as a general rule the through service took care of the local business. It operated local freight and passenger trains between Bridgeport and Jacksboro and afterwards to Graham, from the time the branch to Graham was built until the line was sold to the Gulf Company. (Record, 25.)

On through freight trains the run made by crews was from Fort Worth to Chickasha, and on through passenger trains, from Fort Worth to Caldwell, Kansas, these crews being handled and paid by each Company for work done on its own line. (Record, 26.) It was agreed that defendant's witnesses would testify that the Texas Company paid no part of the cost of operating the Rock Island Railway, and that the Rock Island Company did not pay any part of the cost of the operation of the railway of the Texas Company, and that neither of them participated in the earnings of the other; that the relationship between the Rock Island Company and the Texas Company was fully disclosed by the terms of the contract dated Jan. 2, 1903, which was observed up to the time of its cancellation. (Record, 26.)

It was further agreed that train crews while working on the line of the Texas Company might have been discharged by the proper officer of that Company, and that while working on the line of the Rock Island Company they might have been discharged by the proper officer of that Company and that either company employed additional men when needed. (Record, 26.) At

the time the contract of Jan. 2d, 1903, was cancelled, the Texas Company was operating about 140 miles of railroad and the Rock Island Company about 3,300 miles. For some time after the Texas Company's line was built into Fort Worth it employed and maintained at its Fort Worth office a train-dispatcher who gave orders for the movement of trains over its line, but as a matter of convenience this was discontinued and the Texas Company paid a part of the salary of the train-dispatcher located at Chickasha to give orders for the movement of trains over its rails. (Record, 26.) On the 22d day of September, 1903, the railway and property of the Texas Company, under authority of a special act of the Legislature of Texas, was purchased by the Gulf Company, and since that time the Texas Company has ceased to exist as a railroad or to do business as such. (Record, 26.)

The Gulf Company now owns and controls 386 miles of railroad, all of which is located inside the State of Texas. It does not own any railroad outside the State of Texas. It had at the time of the hearing of this motion 1,600 cars, including ballast, refrigerator and cattle cars, 20 locomotives and 8 cabooses, but does not own any passenger equipment, such equipment being rented from the Rock Island Company, the Texas Company paying therefor current rentals charged by connecting lines in Texas. The train crews of through freight and passenger trains are handled in the same way that they were handled when the line into Fort

Worth was operated by the Texas Company, but the Gulf Company is now operating in many places local trains between local points in Texas. (Record, 26-27.)

Of the stock of the Gulf Company 3,850 shares are held by Wm. Wesley Johnson, a resident of the city of New York. The other stockholders, who hold one share each, are S. B. Hovey, N. H. Lassiter, J. C. McCabe, W. G. Newby and H. C. Holloway, residents of Ft. Worth, Texas; J. B. Wilson, a resident of Dallas, Texas; W. B. Leeds, B. L. Winchell and Robert Mather, residents of Chicago, Ill., and H. B. Low, a resident of El Reno, O. T. (Record, 27.)

Blank passes, properly signed by officials of different railroads, including the Rock Island Company, T. & P. Ry. Co., H. & T. C. Ry. Co., and other lines, are sometimes placed with S. B. Hovey, and when so placed he has the permisson of such lines to fill in the names of parties and countersign passes, and when so countersigned passes are recognized over lines over which they are issued. The local ticket agent of the Gulf Company sells coupon tickets good over the lines of the Rock Island Company and nearly all other lines in the United States, which tickets are duly honored by the respective railroads over which they read. (Record, 27.)

Proper officials of the Gulf Company and the Rock Island Company exchange reports with each other as to the amount of exchange business done. (Record, 28.) No dividends have ever been paid on the stock of the Texas Company or of the Gulf Company. Be-

fore it sold its property, the Texas Company put its net earnings into betterments and improvements, and the Gulf Company has done the same since it acquired the property. (Record, 28.)

In 1897 the Secretary of the Texas Company reported to the Interstate Commerce Commission that it was controlled by the Rock Island Company through the ownership of a majority of its bonds. In 1899 he reported it as controlled by the Rock Island Company through its ownership of the majority of its capital stock. (Record, 28.)

On the 2d day of August, 1894, M. E. Sebree, a resident of Fort Worth, Texas, was Trainmaster of the Gulf Company, and Assistant Trainmaster of the Rock Island Company between the north line of Texas and Chickasha, Indian Territory. He was paid by the Gulf Company for work done for it, and by the Rock Island Company for services on its line. S. B. Hovey is Vice-President and Superintendent of the Gulf Company, and it is agreed that he will testify that he is not connected with and does not perform any service for any other road. (Record, 28.) After making certain changes and additions, the Gulf Company adopted the book of rules issued by the Rock Island Company for the control and operation of its line, and such rules are now in effect. Cars and engines belonging to the Gulf Company are repaired at its shops in Fort Worth, or Dalhart, if cars and engines are convenient to these points. Otherwise the work is done at some other con-

venient place, either on or off the line of the Rock Island Company, wherever the cars or engines may be at the time the repairs are needed. (Record, 28.)

On the 2d day of August, 1904, the Gulf Company had a different President and altogether different executive officers from any of the lines referred to as included in the Rock Island System. The Gulf Company does not now and never has paid any part of the salary of any officers of the Rock Island Company nor of any of the lines named as constituting the Rock Island System. (Record, 28.) Before the Gulf Company purchased the property of the Texas Company and other Texas lines, M. E. Sebree was Trainmaster of the Texas Company and Division Trainmaster of the Rock Island Company with jurisdiction to Chickasha, Indian Territory. Since this purchase by the Gulf Company, Mr. Sebree's jurisdiction has been extended over the purchased lines, but otherwise there has been no change in his employment or his jurisdiction for the past five or ten years. (Record, 28-29.)

The Gulf Company pays a portion of the salary of the train-dispatcher located at Chickasha, I. T., but in giving orders for the handling of trains on the line of the Gulf Company this dispatcher is subject to the control, direction and supervision of the executive officers of the Gulf Company as if exclusively employed by it. (Record, 29.)

The rails of the Gulf Company and the Rock Island Company connect on the north line of the State of

Texas near the middle of the Red River, on a bridge. At this particular point there is no town, station or turn out, and the trains going in either direction do not stop at that point. It was not possible to build a town or station at the exact point of connection. (Record, 29.)

But, the Gulf Company operates under a lease that part of the line of the Rock Island Company which begins at the north boundary line of the State of Texas extending north to the town of Terral, Indian Territory, a distance of about one and one-sixth miles. (Record, 27.)

On the hearing a further agreement was submitted (Record, 29-30) showing that A. L. Thomas, on whom process was served herein as conductor and agent of the defendant, was at the date of said service and had been for many years a conductor running on and handling passenger trains of the Rock Island Company, the Texas Company and, later, of the Gulf Company, running between Fort Worth, Texas, and Caldwell, Kansas, and that he was carried on the pay-roll of the Rock Island Company and paid for services rendered while on the line of that Company north of the Texas state line, and on the pay-roll of the Gulf Company and paid by that Company for services rendered on its line south of the Texas state line; and, that V. N. Turpin, on whom process was served herein as ticket agent of the Rock Island Company, was at the date of such service and had been for a long time ticket agent of the Gulf

Company at Fort Worth, engaged in selling tickets for said Gulf Company over its line and also over the lines of the Rock Island Company and all its connections, and that said Turpin is carried on the pay-roll of the Gulf Company and not on that of the Rock Island Company, and that he is not agent for the Rock Island Company unless the above facts make him one. (Record, 30.)

Plaintiffs then introduced in evidence the Twenty-fourth Annual Report of the Rock Island Company, which contains the following clause:

"The Board of Directors submit their report of the operations and affairs of the Chicago, Rock Island & Pacific Railway Company for the fiscal year ended June 30th, 1904. They have included therein, operations and affairs of the operated lines and auxiliary companies forming the "Rock Island System." In order to make exhibits comparative, the figures for the last preceding year have been re-stated to meet changed conditions due to the including in this report the operation of the auxiliary companies. These lines thus forming the Rock Island System are the following:

MILEAGE OPERATED.

The Chicago, Rock Island & Pac. Railway....6,760.74
The Chicago, Rock Island & El Paso Railway. 111.50
The Chicago, Rock Island & Gulf Railway.... 386.92."

(Record, 37.)

Under the head of "Expenditures for Construction of Extensions and Completion of System Lines," expenditures on the following lines were included:

Fort Worth, Tex., to Dallas, Texas;

Yarnall, Tex., to Amarillo, Tex.;

Jacksboro, Tex., to Graham, Tex.;
Red River to Fort Worth, Tex.;
Texhoma (Texas state line) to Bravo, Tex.;
Texola (Texas state line) to Yarnall, Tex.
(Record, 38.)

This report further shows that certain expenditures made on account of construction and purchase of equipment, theretofore stated in system assets as advances for construction and equipment, have been transferred to property account, the property represented by such amounts having been deeded to the Rock Island Company or to the Gulf Company, and that there has also been transferred to this account expenditures made prior to July, 1903, for the purchase of shares of the capital stock of certain railway companies, including the bonds of the Texas Company, appearing in prior reports as "Stocks and Bonds of Constituent Companies." (Record, 38.) Respecting the extension from Fort Worth to Dallas, Texas, it is said: "This line was completed and the line opened for operation by the Chicago, Rock Island & Gulf Railway Co. Dec. 1st, 1903. It is 33.26 miles in length, connecting with the line of the former, The Chicago, Rock Island & Texas Railway Company at Fort Worth, Tex., and extending to Dallas, where, by agreement with the Gulf, Colorado & Santa Fe Railway Company, it has the joint use of the latter Company's terminal facilities. The opening of this line gives the Gulf Company direct entrance into Dallas, enabling it to compete for the traffic of that

important commercial center." (Record, 39.) Under the head of "Consolidation of Texas Lines," this report shows that the Gulf Company, on Dec. 1st, 1903, purchased the railroads and properties of the Texas Company and certain other Texas lines, thereby permitting the consolidated properties to be operated by one management instead of four separate sets of officials, as had theretofore been required. This report includes the following paragraph:

"In stating the assets and liabilities of the Companies forming the System, the holdings of the Chicago, Rock Island & Pacific Railway in the bonds and capital stock of auxiliary lines, together with loans between system companies, have been eliminated from the liabilities and a like reduction made in the value of the assets; the figures as stated, therefore, represent the value of the assets and the real liability without duplication."

Plaintiffs also introduced in evidence the Second Annual report of the Board of Directors to the Stockholders of the Rock Island Company of New Jersey for the year ending June 30th, 1904. In this report it was stated that the Chicago, Rock Island & Pacific and the St. Louis and San Francisco Railroad Company each operates independently its lines of railway, and that each is interested through the ownership directly or indirectly of at least a majority of the capital stock of certain subsidiary companies, each of which operates its property independently, and the Chicago, Rock Island & Gulf Railway Company is named as one of these subsidiary companies which comprised what

is known as the Rock Island System. (Record, 40.)

Plaintiffs also introduced in evidence a railroad folder dated July 10th, 1904, upon the back of which was printed "Rock Island System. Time Table," and in which appeared among others the name of the Chicago, Rock Island & Gulf Railway Company, together with a list of the names and residences of passenger, freight and traveling agents of such roads respectively, and showing the schedule of passenger service of all said lines; and on the inside of the folder were traced in heavy black lines the line of the Rock Island Company, the Chicago, Rock Island & El Paso Railway and the Gulf Company, so connecting as to show them as belonging to the same system, and below said map was printed "The Rock Island States of America." (Record, 41.) This is the folder referred to by Mr. Hovey in his testimony, in which he stated that the words "Rock Island System" were a kind of a trade-mark. (Record, 49-50.)

Mr. Hovey testified that the Rock Island and Gulf Companies each had separate car service agents. The car service agent of one line had no jurisdiction over cars of the other company; that the Gulf Company ran local freight trains daily between Fort Worth and its northern terminus. He also testified that the lines mentioned on the Rock Island folder as composing the Rock Island System were not operated as one road, but were operated separately, and that their revenue was divided up just as revenues of the Gulf and T. &

P. would be divided; that no reports were made by the Gulf Company to the head of the traffic department of the Rock Island Company; that reports were made by the Gulf Company to the President of the Gulf Company; that no representative of the Rock Island Company was sent or came to examine the books of the Gulf Company any further than as a representative of any other connecting line would occasionally check up business with the Gulf Company; that its books had never been audited from the Chicago office. (Record, 50.) He also testified on cross-examination that there was no contract between the Gulf Company and the Rock Island Company except a traffic agreement as to the division of rates made between the General Freight Agent of each line, of the same character as contracts that exist between the Gulf Company and any other line which interchanges business with it; that the Gulf Company owned about fifteen or sixteen hundred freight and cattle cars and about twenty engines which are marked "C. R. I. & G." (Record, 50.) That since he had been Vice President of the Gulf Company he had no connection whatever with the Rock Island Company and had no duties to perform with any other railroad than the Gulf Company; that the Rock Island Company pays no part of the salary of the general officers of the Gulf Company; that trainmen who run over the lines of both companies are paid by each company for services rendered on its line, each company

paying the men while on its rails and not paying them when they are on the rails of the other company; that neither company pays any part of the expense of the men when working on the line of the other company; that for traffic hauled over the two lines the Gulf Company receives the amount of the division agreed upon by the General Freight Agents in the same way and to the same extent that it receives divisions of earnings on freight transported in connection with the T. & P., and that neither road pays any part of the expense of moving freight over the lines of the other company, nor pays any part of the loss sustained while in the hands of the other company by damage to freight; that the Gulf Company had on deposit with the Rock Island Company several hundred thousand dollars for which it received six per cent interest; that the Gulf Company checks on this fund whenever money is needed; that this rate of interest is larger than can be obtained from any local bank. (Record, 51.)

F. E. Mitchell testified that he was Secretary of the Gulf Company; that the Board of Directors of the Gulf Company were Mr. Hovey, Mr. Lassiter, Mr. Winchell, who was President of the Gulf and Rock Island Companies, Mr. Newby and Mr. Holloway, and there were two other directors whose names he did not remember. That as Secretary and Treasurer of the Gulf Company he made no report to the General Passenger Agent of the Rock Island Company. That nobody but the Auditor at Fort Worth audits the books of the Gulf Com-

pany, and that no one came down there to him for any information.

After considering the testimony the Court sustained the motion to quash the service of citation, and dismissed the suit for want of jurisdiction.

Argument.

Two questions are presented by the record in this case: First, Was the Rock Island Company, at the times when the citations were served, doing business in the State of Texas, within the meaning of the rule which permits a foreign corporation doing business in a State to be summoned in a suit pending in that State? Second, If it was so doing business in Texas, were the citations, or either of them, served upon a person authorized to accept service in its behalf?

I.

1. A foreign corporation can only do business in a State with its consent expressed or implied. The laws of Texas give no such express consent to a foreign railway company and none can be implied, either from its laws or its action with respect to such corporations. It does not authorize a foreign railway company to own, lease or operate a railway within the State. There is nothing in the record to show that the Rock Island Company was doing business in Texas with the consent of the State.

The Lafayette Ins. Co. v. French, 18 How. 404;

St. Clair v. Cox, 106 U. S. 350;

Barrow Steamship Company v. Kane, 170 U. S. 100.

2. The evidence offered on the hearing of the motions to quash the service of citations was not sufficient to show that the Rock Island Company was doing business in Texas. As a matter of law, it could not own, lease or operate the railway of the Gulf Company; nor could these companies consolidate. On the facts stated in the petition the Court will take judicial notice that each company was a separate and independent corporation, created under the laws of different States, and that they could not be one company, substantially or otherwise, because they had no power to so unite.

The fact that the Rock Island Company loaned money to the Texas Company to assist it in constructing or extending its railway, that it owned all or any part of the capital stock of the Gulf Company, and that it exercised such authority in the selection of directors of the company as a stockholder lawfully may, does not tend to show that it was doing business in Texas.

United States v. American Bell Telephone Co., 29 Fed. 17;

Pullman Car Co. v. Missouri Pacific Co., 115 U. S. 587, 596;

Potter v. Pittsburg Bessemer Steel Co., 120 U. S. 649;

Pennsylvania Railroad Co. v. Jones, 155 U. S. 333, 344;

Earle v. Chesapeake & O. Ry. Co., 127 Fed. 235;

Central Grain & Stock Exch. v. Board of Trade, 125 Fed. 463;

St. Louis & Southwestern R. Co. v. Gate City Co-operative Co., 70 Ark. 10;

St. Louis & Southwestern R. Co. v. Smith, 71 Ark. 290;

Conley v. Mathieson Alkali Works, 190 U. S. 406.

The stock of a Texas railway corporation is personal property, and when lawfully issued may be purchased and held by any corporation having power to do so. Article 4394, Sayles' Texas Civil Statutes, is as follows:

"Art. 4394. Railroad Stock is personal estate and transferable.

The stock of a railroad corporation shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any shares be transferable until all previous calls thereon shall have been paid."

The following statute of the State of Illinois authorizes the Rock Island Company to hold two-thirds or more of the stock of the Gulf Company:

"14. Capital stock to be personalty—Transfer—Use of funds—Railroad may hold stock of connecting lines in other States. Section 14. The stock of such corporation shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of such corporation. But no shares shall be transferable until all previous calls thereon shall have been paid; and it shall not be lawful for such corporation

to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them or any of them to use the same for other than the legitimate purposes of such corporation. Provided, however, that any railroad company incorporated and organized or that may hereafter be incorporated and organized under any general or special law of this State, and operating a railroad which now connects or hereafter may connect at any point with any railroad of any other State, shall have power, acting by itself, or jointly with another company or companies, to own and hold the stock and securities of the corporation owning said connecting road, or any part thereof; such ownership or holding to comprise at least two-thirds in amount of the stock of such corporation; but in case of the purchase of stock the company or companies so purchasing shall take and pay for all the shares of the company whose stock is so purchased that may be offered, and the terms of purchase of all shares shall be the same to all stockholders."

[Starr and Curtiss' Annotated Illinois Statutes, Vol. 3, p. 3229.]

It is charged with much vehemence and reiteration that the Gulf Company is completely dominated and controlled by the Rock Island Company, and that it is the partner and agent in Texas of the Rock Island Company, but the evidence does not sustain these charges. There is nowhere any showing that the Rock Island Company has asserted or exercised any control over the affairs of the Gulf Company that a stockholder may not lawfully and properly exercise.

The affairs of the Gulf Company are managed by its own officers without any apparent interference by of-

ficers of the Rock Island Company. The traffic relations of the two companies are not shown to be greatly different from those sustained by the Gulf Company with other companies. The physical conditions growing out of the connections of the two lines at the Texas state line compel each to give much of its business into and out of the State to the other. Each is manifestly interested in promoting such business, but each handles it independently on its own line, at its own expense, and receives its agreed division of the through rate. An agreement for the interchange of business and the division of the through rate over a through route, each company undertaking to act independently on its own line, does not make the contracting companies partners; nor does it create a partnership agency.

United States v. American Bell Telephone Co., 29 Fed. 37;

Insurance Co. v. Railroad Co., 104 U. S. 146;

Pennsylvania Railroad Co. v. Jones, 155 U. S. 333, 344, 345.

The fact that the Gulf Company was reported and advertised as a part of the "Rock Island System" did not show that the Rock Island Company was, through the agency of the Gulf Company, doing business in Texas, the evidence showing that each member of the system managed its own affairs through its own officers, paid its own expenses and retained its own earnings.

Kingsley v. The Great Northern R. Co., 91 Wis. 380;

Pennsylvania Railroad Co. v. Jones, 155 U. S. 333, 341, 345;

White Star Line v. Star Line, 141 Mich. 604.

II.

None of the citations issued in this case was legally served, and on the facts in evidence, the Court did not err in sustaining the motion to quash.

To the validity of service of process upon a foreign corporation it is necessary that the corporation be at the time actually and substantially doing business in the State, and that the service be made upon an agent representing the corporation with respect to the business carried on in the State, in such a capacity that, in the absence of express authority, acquiescence in the exercise of such authority ought to be clearly implied. The agent upon whom service is made must sustain such a representative relation to the business transacted by the corporation in the State as to charge him with the duty of accepting service.

Story on Agency, Sec. 140;

St. Clair v. Cox, 106 U. S. 350, 357;

Fitzgerald Const. Co. v. Fitzgerald, 137 U. S. 98-106;

Mexican Central Ry. v. Pinkney, 149 U.S. 194;

Goldey v. Morning News, 156 U. S. 518, 521, 522;

United States v. American Bell Telephone Co., 29 Fed. 17;

Mutual Life Ins. Co. v. Spratley, 172 U. S. 602, 617, 619;

Earle v. Chesapeake & O. Ry. Co., 127 Fed. 235, 240;

Conley v. Mathieson Alkali Works, 190 U. S. 406;

Central Grain & Stock Exchange v. Board of Trade, 125 Fed. 463;

N. K. Fairbanks & Co. v. Cincinnati N. O. & T. P. Ry. Co., 54 Fed. 420, 423;

Strain v. Chicago Portrait Co., 126 Fed. 831, 833, 834;

Frawley v. Pennsylvania Casualty Co., 124 Fed. 259;

Union Pacific R. Co. v. Miller, 87 Ill. 45.

Service upon one partner or joint obligor will not confer jurisdiction to render a personal judgment against another partner or joint obligor.

D'Arcy v. Ketchum, 11 How. 165;

Goldey v. Morning News, 156 U. S. 521;

In re Grossmayer, 177 U. S. 48;

Kingsley v. Great Northern R. Co., 91 Wis. 380.

III.

The Legislature and the courts of Texas have gone to great length in reaching out for jurisdiction over foreign corporations and non-residents. An extreme case is that of *Buie v. The Chicago, Rock Island and*

Pacific Railway Company, et al., 95 Tex. 51. Buie was injured at Clio, Iowa, by reason of a collision between two parts of a freight train on which he was being carried as a passenger to look after certain cattle shipped from Ryan, Indian Territory, to Chicago, Illinois, over the Chicago, Rock Island and Pacific Railway. He brought suit in the District Court of Montague County, Texas, against the Rock Island Company and The Chicago, Rock Island and Texas Railway Company, to recover damages for his injuries. The citation was served upon S. B. Hovey, as Vice-President, Acting President, General Superintendent and General Manager of both companies, and upon J. D. Gilfillan, as Local Agent thereof at Bowie, in Montague County. Affidavits were filed by the parties served, denying that they were officers or agents of the Rock Island Company. The District Court on hearing the testimony dismissed the suit against the Rock Island Company, and instructed the jury to return a verdict in favor of the Texas Company. The Court of Civil Appeals affirmed this judgment, but certified the case to the Supreme Court; that Court holding the service good and that b[illegible] companies were liable for the damages claimed, reversed the judgment and remanded the case for trial. A verdict was finally obtained against both companies, which on appeal [was affirmed by the Court of Civil Appeals, Texas Civil Appeals Reports, 654.

The decision of the Supreme Court was based on its finding that on the facts the Texas Company was a

mere agency of the Rock Island Company, and that the Rock Island Company was doing business in Texas by and through the persons who purported to represent the Texas Company for the exchange of through business, and upon the fact that the Rock Island Company owned a majority of the stock of the Texas Company and had loaned it money to be used in the construction of its line.

In support of its position the Supreme Court of Texas cited the following cases:

St. Clair v. Cox, 106 U. S. 350, brought in the Circuit Court of the United States for the Eastern District of Michigan, and in which, among other defenses, the defendant pleaded a judgment against a foreign corporation obtained in a Michigan court. The return of the officer in the suit in the State court recited that he had served a copy of the writ, with copy of an inventory of the property attached, on the defendant, "by delivering the same to Henry J. Coldwell, Esq., Agent of the said Winthrop Mining Company, personally, in said county." This Court held the service insufficient to sustain personal judgment against the Winthrop Mining Company. It said that there was no evidence in the case to show that the Winthrop Mining Company was engaged in business in the State when the service was made on Coldwell; that it did not appear even *prima facie* that Coldwell stood in any such representative character to the company as would justify the service of a copy of the writ on him.

It was said in the opinion that "a corporation of one State cannot do business in another State without the latter's consent, express or implied, and that consent may be accompanied with such conditions as it may think proper to impose," and that, "such condition must not, however, encroach upon the principle of natural justice which requires notice of the suit and object before he can be bound by it. It must be reasonable, and the service provided for should be only upon such agents as may be properly deemed representative of the foreign corporation. The decision of this Court in *Lafayette Insurance Co. v. French,* to which we have already referred, sustains these views."

The Court further said: "We do not, however, understand the laws as authorizing the service of a copy of a writ as a summons upon an agent of a foreign corporation, unless the corporation be engaged in business in the State, and the agent be appointed to act there. We so construe the words 'agent of such corporation within the State.' They do not sanction service upon an officer or agent of a corporation who resides in another State, and is only casually in the State, and not charged with any business of the corporation there." The Court said further, that when the record of a foreign judgment is offered in evidence showing *prima facie* that the defendant was served through an agent, the defendant could show "that the agent stood in no representative character to the company and that his duties were limited to those of a subordinate employe

or to a particular transaction or that his agency had ceased when the matter in suit arose."

Hatcher v. United States Leasing Co., 75 Fed. 368, was an action to foreclose a mechanics' lien on certain mines owned by one of the defendants and leased by it to the other defendant. No question of jurisdiction was involved. The Court held on the facts of the case that the property was subject to a lien for improvements made upon it by the lessee company, the relations between the two companies being such as to make it inequitable to permit the company owning the property to retain the improvements without paying for them.

Lehigh Mining and Mfg. Co. v. Kelly, 160 U. S. 327, was a case where a corporation of one State attempted to transfer its property to a corporation organized in another State for the purpose of conferring jurisdiction upon a Federal Court, it being expressly admitted "that the parties in organizing said Lehigh Mining and Manufacturing Co., and in making to it said conveyance, was to give to this Court jurisdiction in this case." The Circuit Court dismissed the action for want of jurisdiction. The Supreme Court affirmed the judgment on the ground that the property in controversy had been collusively transferred for the purpose only of bringing suit in the Federal Court.

Penn. R. Co. v. Anoka Nat. Bank, 108 Fed. 482, was an action to recover damages for freight alleged to have been lost by the defendant. The freight was delivered to a carrier in Minnesota for transportation to

Frederick, Md. It was lost while in possession of the last carrier, the Philadelphia, Wilmington & Baltimore Railroad Company. There was testimony to show that while this company was an independent corporation, its line was actually operated by the defendant, the Pennsylvania Railroad Company, and that the Pennsylvania Company was in possession of the property at the time it was lost. In affirming the judgment the Court said that there was evidence from which a jury might rightfully infer that the railroad in question was actually operated by the Pennsylvania Company, and that "the defendant company, of course, knew exactly the relation it sustained to the Philadelphia, Wilmington & Baltimore Co., and if it was not such as the mass of testimony introduced by the plaintiff strongly tended to show it to be, it was open to it to produce convincing evidence of the fact and show precisely what the relation was; and, not having done so, every inference warranted by the evidence may justly be indulged against it."

Reference was made to *Railroad Co. v. Howard*, 178 U. S. 153, where a passenger traveling on a through ticket sold by the defendant, the C. & O. R. Co., was injured, the defense being that the train upon which the accident happened was at the time being managed by a Connecticut company to which the road had been leased. On the trial the Court charged that it was not enough to render the defendant liable or justify them in holding that it was operating the road to find that it sold

tickets over it; that it must appear from all the evidence, not only that the defendant sold the ticket over that road upon the faith of which the passenger was riding at the time, but that in order to hold the defendant liable they must find that the C. & O. Co., as a corporation, by its officers and agents, was operating the road; that that corporation controlled the road, operated it, ran it, and that the trains which ran over it were its trains; that they were manned by its employes and controlled by its officers and agents, and that unless they find these facts they must find for the defendant upon that point. The Supreme Court held that this charge was substantially correct, suggesting, however, that it was not necessary to make it liable that it should have had complete control and management of the road; that "if it had the control and management of that train it would have been sufficient, even though the Kentucky or the Connecticut Co. managed and controlled other and local trains over the road of the Kentucky Co."

Norton v. A. T. & S. F. R. Co., 61 Fed. 618, was an action to recover the value of certain horses shipped from Hiawatha, Kansas, to be transported to Escondido, California, and which were alleged to have been killed in transit by reason of the negligence of the defendant. Action was commenced in the State Court in California. Process was served on K. H. Wade, recited in the service to be General Manager of the defendant. The defendant not appearing, judgment was rendered against it by default. Thereupon the defend-

ant moved to set aside the judgment on the ground that the service was not had upon its managing or business agent as required by the California code. The defendant introduced testimony showing that the person upon whom service was made was not its agent, but the agent of a connecting line which was operated as a distinct corporation. Evidence was introduced showing advertising of the "Santa Fe Route," to some of which the name of "K. H. Wade, General Manager," was appended, and that the defendant was the owner of a majority of the stock of the Southern California Railway Company, of which Wade was General Manager. The defendant introduced testimony showing that the appellation "Santa Fe Route" did not designate either of the corporations operating the through line, but that it was simply a term used designating a particular line of travel composed of connecting railroads. The motion to set aside the judgment was sustained. This judgment on appeal was affirmed by the Supreme Court Commissioners. This decision was afterwards affirmed by the Court *en banc*, 32 Pac. Rep. 452. Afterwards the suit was renewed in the Superior Court of San Diego County, Calif., and was removed by the defendant into the Circuit Court of the United States, where the defendant moved to quash the service of summons. In the return of service Wade was designated as "Managing and Business Agent of said defendant." In overruling the motion to quash, the Court said: "The evidence further shows that the defendant

sends its own trains through from Chicago to Southern California points in charge of its own employes, along the lines of road of the Atchison, Topeka & Santa Fe Company, the Atlantic & Pacific Company and the Southern California Railway Company, and over the same route through trains are sent from Southern California points to Chicago. It shows further that the General Passenger and Freight Agents of the Southern California Railway Company, together with other assistants, subject to the supervision and control of Mr. Wade, solicit and handle the traffic for the Santa Fe Route in Southern California; and, as that route undeniably includes the defendant company, it seems to me little less than absurd to say that the defendant does not do business in Southern California; and if it does transact business here, how else does it conduct it than through those agents who solicit and handle the traffic, all of whom, according to the testimony of Mr. Hines, are subject to the management of Mr. Wade."

In one of the advertisements offered for evidence it was stated that "the California line of the Santa Fe is composed of the following roads," and among the roads named was "The Southern California Railway Company."

Interstate Tel. Co. v. Baltimore & O. Tel. Co. of Baltimore County, et al., 51 Fed. 49, was a creditors' bill filled by the Interstate Tel. Co. against the Baltimore & O. Tel. Co. of Baltimore County and the Baltimore & O. Railroad Co. to obtain payment of a judgment

against the defendant Telegraph Company which it had recovered on the law side of the court, and upon which execution had been returned *nulla bona*. It appeared from the testimony and the admissions of the pleadings that the Railroad Company, being engaged in the construction of a system of telegraph along its railroad for railroad purposes, caused the B. & O. Tel. Co. to be organized; that all of the stock of the B. & O. Tel. Co. belonged to the Railroad Company, and that its corporators and officers were employes of the Railroad Company and appointed by it. Afterwards the Railroad Company transferred its entire telegraph system, including that constructed in the name of the B. & O. Tel. Co., to the Western Union Telegraph Co., thereby rendering the B. & O. Tel. Co. insolvent, being left without any property or assets of any value. The bill asked that the Railroad Company be decreed to hold the funds arising from the sale of the property of the B. & O. Tel. Co. in trust for all the creditors of said company who became such by virtue of contracts made prior to such sale, and that a receiver for the Telegraph Company be appointed. The Court held that whether the Railroad Company and the Telegraph Company of Baltimore County are to be considered in this litigation principal and agent, or the Railroad Company as the sole stockholder of a corporation of which it was also creditor, it would be inequitable for it on the facts disclosed to deprive the plaintiff of the payment of his claim. The Court did not hold that the judgment against the Tele-

graph Company of Baltimore County would have settled the rights of a complainant against the Railroad Company if it had not appeared in that case. The Court said: "The judgment against the Telegraph Company might be held not to settle the rights of the complainant against the Railroad Company if the Railroad Company had not intervened or participated in any way in the defense of the action in which the judgment was obtained; but that defense is not raised by the answer and quite possibly could not be made." There was no controversy as to the amount which the plaintiff was entitled to recover if the Railway Company was liable for the debt.

Montgomery v. Forbes, 148 Mass. 249: It was held that a buyer of goods for his sole benefit purchased goods in the name of a corporation in good faith, or organized by him and having no real existence, and gives in payment therefor a promissory note in the name of the corporation, the seller may treat the note as void and recover against the buyer personally on the original contract for goods sold and delivered. The Court said: "This is not a case where there has been a defective organization of a corporation which has a legal existence under valid charter. Here there was no corporation. It was just the same as if the defendant had done nothing at all in the way of establishing the corporation, but had conducted his business under the names of the Forbes Woolen Mills, calling it a corpora-

tion. The business was his personal business which he transacted under this name."

Day v. Postal Telegraph Company, 66 Md. 365, was a creditor's bill against certain insolvent corporations. A telegraph company organized under the laws of New York and operating a telegraph system extending over a number of States, caused a corporation to be organized in Maryland for the purpose of constructing and operating telegraphs in that State. The stock of the Maryland Company amounted to only Five Hundred Dollars. The New York Company supplied the funds for the construction of the Maryland lines and took entire charge of them, managing them without intervention of the directors of the Maryland Company, receiving and appropriating all the revenues derived from the operation of the Maryland lines as its own property and not keeping any account with the Maryland Company. The New York Company becoming insolvent, it was held that the property of the Maryland Company should be sold and applied to the payment of the debts of the New York Company.

None of the cases cited in the Buie case, *supra*, is authority for holding that jurisdiction of a foreign corporation may be obtained by serving process on a state corporation with, or through which, it does business, or in which it is interested as stockholder or otherwise. In *Norton v. A. T. & S. F. R. Co., supra*, service was made upon Wade as the business manager, not of the Southern California Ry. Co., but of the defendant com-

pany, and it was upheld upon the theory that the evidence showed that the Santa Fe Company was itself by and through its own agents and employes directly managing and operating trains and doing business in the State of California, and that Wade was one of its agents and employes. The service upon him was not held valid because he was general manager of the Southern California Ry. Co., but because he was business manager for the Santa Fe Co.

In the case at bar there was no evidence that the Rock Island Company, through its officers and agents, managed or controlled the operation of the railway of the Gulf Company. The testimony is clear that the Gulf Company operated, managed and controlled its own property through its own board of directors, and officers and employes appointed by them. Each paid the expenses of operation and maintenance of its own line and each received and appropriated its own earnings, and earnings on through business were divided under an agreement between the general freight agents of the two companies on the same basis as divisions were made with other connecting lines. Vice-President Hovey, of the Gulf Company, testified that after his appointment as Vice-President he had no official connection with the Rock Island Company and no jurisdiction over any of its affairs; that his duties were confined solely to the management of the affairs of the Gulf Company. (Record, 50-51.) The affidavit of F. E. Merrill (Record, 13) shows that he was not at the

time of service of said citation, nor at the time of the happening of the action involved in said suit, nor at any other time, Local Agent or any character of agent for the Rock Island Company, and there is nothing in the record to show that he had at any time ever transacted any business in Texas for the Rock Island Company. The affidavit of M. E. Sebree shows that he was not at the time of service and never had been President, Vice-President, Secretary, Treasurer or General Manager or the Local Agent in Texas of the Rock Island Company. (Record, 14.) In the agreed statement of facts (Record, 25) it is stated that Sebree "was for a number of years, and until the date of sale, Trainmaster of the Chicago, Rock Island and Texas Company, and Assistant Trainmaster of the Chicago, Rock Island and Pacific Company, with jurisdiction of that part of the line up to Chickasha; prior to the time that he was employed by the Chicago, Rock Island and Texas Company he had been in the employ of the Rock Island Company as a brakeman, conductor, etc." It is shown further in the agreed statement (Record, 28) that Sebree was paid by the Gulf Company for work done for it and by the Rock Island Company for the work done for it. In other words, he performed the duties of Trainmaster for the Rock Island Company on its line in the Indian Territory south of Chickasha and was paid by it, and performed like service for the Gulf Company on its lines in Texas and was paid for such service by the Gulf Company. He did not in any way

represent the Rock Island Company with respect to any business transacted by it in the State of Texas, and was not, therefore, the Local Agent of that company for the transaction of any of its business in Texas. He was only a subordinate employe, and sustained no such relation to either company as justified, either under the statutes of Texas or otherwise, the service of summons upon him. He occupied no representative relation to either company. The term Local Agent, as used in Article 1223, of the Statutes of Texas, *supra*, must necessarily refer to an agent having charge locally of the business of a foreign corporation then being carried on in the State, through or under his agency. Sebree was not such an agent, and the business of the Rock Island Company with which he was connected was not carried on within the State of Texas but in the Indian Territory. The fact that he resided in Texas can make no difference. It is not the place of residence of the agent, but the place in which the business in which he is employed as agent is carried on, that gives authority to serve process upon him. As was said in *Earle v. C. & O. Ry. Co.*, 127 Fed. 235-6, "the mere presence of some of its officers or agents does not justify the conclusion that they have brought the corporation with them."

Goldey v. Morning News, 156 U. S. 518-521-522.

It has been held frequently by this Court and others that service cannot properly be made upon an officer of a foreign corporation whose duties grow out of busi-

ness done by the corporation in some other jurisdiction.

The service upon the train conductor, A. L. Thomas, and V. N. Turpin, ticket seller of the Gulf Company, was properly quashed. Thomas was a mere subordinate employe of the Rock Island Company when employed in its service in the Indian Territory, and a like employe of the Gulf Company when employed in its service in Texas. The fact that he was conductor on a through train between Caldwell and Fort Worth did not make him a joint employe of the two companies over whose lines he ran. It was entirely competent for one company to employ him as conductor to run its trains between Caldwell and Terral, and the scope of his employment was not enlarged because some other company, when he reached the end of his run, employed him to conduct its train to another point, the employment in each case being entirely independent, each company paying for the service rendered on its own line, and he being responsible solely to the Company upon whose line he was at the time engaged. While employed by the Gulf Company in running its trains in Texas, he was not employed by the Rock Island Company in running trains in Kansas and the Indian Territory. His employment for the Rock Island Company ceased for the time when he passed into the service of the Gulf Company. The fact that a person works during one part of a day for one company and during the other part of the day for another company does not make him a joint employe of the two companies, or

make him the agent of one company while he is engaged exclusively in the service of the other company. The affidavit of Thomas (Record, 18) shows the separate character of his employment with each line. The supplemental agreement of facts (Record, 29-30) shows that Thomas was carried on the Rock Island pay-roll for services rendered on its line north of the Texas state line, and on the pay-roll of the Gulf Company for services rendered on its line south of the Texas state line.

Said supplemental agreement also shows that V. N. Turpin at the time of the service of process was ticket agent of the Gulf Company at Fort Worth "engaged in selling tickets for the Chicago, Rock Island and Gulf Railway Company over its lines, and also over the line of the Chicago, Rock Island and Pacific Railway Company, and all its connections." The language is that Turpin was engaged in selling tickets for the Gulf Company. There was no agreement that he was engaged in selling tickets for the Rock Island Company. The fact that tickets sold for the Gulf Company by its agent Turpin were good over lines of the Rock Island Company, or other lines did not make him local agent of the Rock Island Company, or any other company over whose lines these tickets were made good.

Sections 2 and 3 of the Act of March 13th, 1905 (Gen. Laws of Texas, 1905, p. 29), *supra*, are in violation of the constitution of the United States, in that the service provided for does not constitute due pro-

cess of law. By these sections the State of Texas attempts to authorize the service of process on a foreign corporation by serving a person in that state as agent of the foreign corporation on the mere ground that he handles trains across the state line of the State of Texas, or upon any person who sells tickets for the transportation of passengers or makes contracts for the transportation of property over any line of railway of such foreign corporation, without regard to whether the persons upon whom process is so served are actually in the employ of the foreign corporation in the transaction of its business in the State.

In the Buie case considerable stress was laid upon the fact that the traffic contract between the two companies provided for a through line for the transportation of freight and passengers. As has already been stated, that contract was abrogated before the Gulf Company purchased the property of the Texas Company but it may be said that the practice of transporting passengers and freight from points on the line of one Company to points on the line of the other Company as through traffic still continues and there is no good reason why it should not continue in the manner in which it is now carried on. It is manifestly in the interest of the public, as well as in the interest of the two companies, that it should continue. A carrier may lawfully contract for the transportation of passengers and freight beyond its line, and unless otherwise limited by law may, in the contract for carriage, stipulate

against liability or may become liable for the safe transportation of such passengers or freight to the point of destination. The laws of many States, including the State of Texas, provide for through carriage and through billing. Section 20 of the Interstate Commerce law, as amended by the act of June 29th, 1906, provides "that any common carrier, railroad or transportation company receiving property for transportation from a point in one State to a point in another State, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss or damage or injury to such property caused by it or any common carrier, railroad or transportation company to which said property may be delivered, or over whose line or lines such property may pass." The act further provides that the initial carrier issuing the through bill of lading may recover from the carrier on whose lines the damage was sustained, the amount it may be required to pay.

Obviously two corporations may within certain limits so conduct their affairs as to make them jointly liable for the acts of either, and so as to make each liable for the acts of the other. But because such corporations may be jointly or severally liable, it does not follow that in an attempt to enforce such liability the service of process upon one of them or the agents of one of them, would justify a personal judgment against the other. Liability for a given action is one thing, and the sufficiency of the service of process to confer jurisdiction

on the Court to render personal judgment on account of that liability is entirely another thing.

In the Buie case, *supra*, it was held, substantially, that by reason of its contract with the Gulf Company, its furnishing of money to construct the line of the latter company, and its ownership of the majority of its stock, the Gulf Company became the instrument or agency through which the Rock Island Company was doing its business in Texas; and it went further in holding that this agent which the Court held to be controlled and dominated by the Rock Island Company was liable for injuries received by the plaintiff in Iowa while he was being carried by the Rock Island Company from Ryan, Indian Territory, to Chicago, Illinois, although the Texas Company in no manner participated in causing the injury, did not participate in any manner in his transportation, and was not entitled to any part of the compensation earned for his carriage; and under the ruling of the Supreme Court, judgment was rendered against both companies and in favor of the plaintiff, which judgment was affirmed.

C. R. I. & P. Ry. Co. v. Buie, 31 Tex. Civ. App. 654.

In *Pullman Palace Car Co. v. Missouri Pacific*, 115 U. S. 587, it was held that the Missouri Pacific Company, although it held practically all of the stock of the St. Louis, Iron Mountain and Southern Ry. Co., and although five directors of the Missouri Pacific were also directors of the Iron Mountain Company, and the

two roads were operated under the same management, the general offices of the two companies being kept together, and both roads being managed substantially by the same persons, was not liable for the obligations of that Company, its corporate organization being maintained and its board of directors remaining in control of the property. The Court said:

"We are also of opinion that the railroad of the St. Louis, Iron Mountain and Southern Company is not controlled by the present Missouri Pacific Company in such a way as to require that company to haul the Pullman cars over it, if the contract is binding on the new company to the same extent it would be on the old were that company still in existence and standing in the place of the new. Confessedly the St. Louis, Iron Mountain and Southern Company keeps up its own corporate organization. It operates its own road. It has its own officers and makes its own bargains. The Missouri Pacific owns all, or nearly all, its stock, and in that way can determine who shall constitute its board of directors, but there the power of that company over the management stops. The board when elected has controlling authority, and for its doings is not necessarily answerable to the Missouri Pacific Company. The two roads are substantially owned by the same persons and operated in the same interest, but that of the St. Louis, Iron Mountain and Southern Company is in no legal sense controlled by the Missouri Pacific. . . . The Missouri Pacific Company has bought the stock of the St. Louis, Iron Mountain and Southern Company, and has effected a satisfactory election of directors, but this is all. It has all the advantages of a control of the road, but that is not in law the control itself. Practically it may control the company, but the company alone controls its road. In a sense, the stockholders of a corporation own its property, but they are not

the managers of its business or in the immediate control of its affairs. Ordinarily they elect the governing body of the corporation, and that body controls its property. Such is the case here. The Missouri Pacific Company owns enough of the stock of the St. Louis, Iron Mountain & Southern to control the election of directors, and this it has done. The directors now control the road through their own agents and executive officers, and these agents and officers are in no way under the direction of the Missouri Pacific Company. If they or the directors act contrary to the wishes of the Missouri Pacific Company, that company has no power to prevent it, except by the election, at the proper time and in the proper way, of other directors, or by some judicial proceeding for the protection of its interest as a stockholder. Its rights and its powers are those of a stockholder only. It is not the corporation, in the sense of that term as applied to the management of the corporate business or the control of the corporate property."

In *Porter v. Pittsburg Bessemer Steel Co.*, 120 U. S. 670, the Court said:

"The mere fact that Crawford owned a majority of the stock did not give him the legal control of the company; nor from such ownership can the legal inference be drawn that he dominated the board of directors."

In *Penn. Railroad Co. v. Jones*, 155 U. S. 333, 344-345, it was attempted to hold the Pennsylvania Railroad Company liable for damages sustained by a mail clerk being transported on a train of the Virginia Midland Railway Company. On the trial there was an attempt to show that the lines forming the through route, although owned by different companies, were operated in connection with each other on joint account and that

there was such community of interests among them as would make them all liable for the acts of agents or employes of any one of them. The Pennsylvania Company interposed a special plea denying that it was a common carrier of passengers and freight as charged in the declaration. Reports of the stockholders of the Pennsylvania Company, giving data with respect to control of lines and showing that it was a large stock and bond holder in the several subsidiary lines joined with it in the suit, were put in evidence. There was also a map showing a continuous line between Philadelphia and Quantico with letters signifying that the roads embraced therein were these subsidiary companies. It was also proven that tickets were sold by the Pennsylvania Company over these lines and that some persons who were officers of the Pennsylvania Company were likewise officers of the other companies and that employes of some of the roads were paid from the pay car whose brakemen and conductor wore the uniform of the Pennsylvania Company. Newspaper advertisements were also put in evidence calling attention of the public to the Great Pennsylvania Route, in which it was shown that Jas. R. Wood was General Passenger Agent and Chas. E. Pugh, General Manager of the Pennsylvania Company, stationed at Washington; and it likewise appeared that they occupied similar positions in the other companies. There was also evidence that pilots were put upon through trains who were sometimes employes of one of these companies and

sometimes of another; that the pilot who took charge of the train upon which the injury occurred and under whose direction it was at the time, wore such a uniform as was worn by the employes of the Pennsylvania Company except that on the buttons were the initials "B. & P." and that he was on the pay-rolls of the Alexandria & Fredericksburg Railway Company, one of the defendants. It was also shown that engines and cars going over the several roads bore the initials of different lines indiscriminately. It was held that taking the plaintiff's evidence as a whole and supplementing it with such facts favorable to it as appeared in the defendant's evidence, the Pennsylvania Company was not liable. The Court said:

"That the Pennsylvania Railroad Company owned stock and bonds of some of the other companies defendant did not tend to show a partnership or agreement to run the roads of the latter on common account. Such ownership rather went to explain why some of the officers of the Pennsylvania Company held official positions in the other companies, and to show why their officers were consulted about the arrangement made between the Alexandria and Washington, the Alexandria and Fredericksburg, the Baltimore and Potomac Railroad Companies, and the Virginia Midland Railway Company, for the use by the latter of the roads of the former between the cities of Alexandria and Washington, as testified to by J. S. Barbour, and also explains the references made in the reports of the Pennsylvania Railroad Company to these roads as connecting with their system. . . . That the Pennsylvania Railroad Company advertised that it ran trains, or connected with trains of other companies, so as to form through lines, without breaking bulk or transferring

passengers, did not tend to show any contract or agreement between the companies to share profits and losses. Nor was there evidence, in the present case, that there was any actual participation by the Pennsylvania Railroad Company in the earnings of the other companies which used the road between the cities of Alexandria and Washington."

In *Connelly v. Mathieson Alkali Works*, 190 U. S. 406-409, 411, it was held that it is not every service upon an officer of a corporation which will give a State court jurisdiction of a foreign corporation; that the residence of an officer of a corporation in the State does not necessarily give it a domicile in the State; that to authorize service upon it he must be there officially representing the corporation in its business, and that service upon a director of a foreign corporation who resided in New York was not sufficient to bring into court a corporation which was not at the time doing business in the State. The defendant corporation at one time owned property in that State, but afterwards, and before the service of process, conveyed it to the Castner Electrolytic Alkali Company, a corporation organized under the laws of Virginia. The consideration of the conveyance was One Dollar and other valuable considerations, the substantial consideration being the entire capital stock of the grantee. The defendant was a corporation organized under the laws of Virginia. The summons was served on two directors of the defendant company who resided in the city of New York, but who were not officers of the Company. A motion to quash

the service was filed and there was a reference to a Master to take testimony and report on the facts. After stating the facts found, he reported the following conclusions:

"The fact that it held the entire capital stock of the Castner Electrolytic Alkali Company and that the operations of that company were carried on under the same management as before December 31, 1900, is not material. The new corporation was a separate legal entity, and whatever may have been the motives leading to its creation it can only be regarded as such for the purposes of legal proceedings.

"It was that corporation alone which transacted any business in this State, notwithstanding it may have been for all practical purposes merely the instrument of the defendant corporation. *People v. Am. Bell Telephone Co.*, 117 N. Y. 241; *United States v. The Same*, 29 Fed. 17."

After quoting the language of the Court in *Goldey v. Morning News*, 156 U. S. 518, to the effect that it is an elementary principle of jurisprudence, that a court cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction, except by actual service of notice within the jurisdiction upon him or someone authorized to accept service in his behalf, the Court said:

"The principle announced in *Goldey v. Morning News* covers the case at bar. The residence of an officer of a corporation does not necessarily give the corporation a domicile in the State. He must be there officially—there representing the corporation in its business. *St. Clair v. Cox*, 106 U. S. 350. In other words, a corporation must be doing business there, and, recognizing the necessity of this, the Circuit Court referred

that issue to a Master. The decision upon the issue was adverse to the contention of the plaintiff, and we cannot say that it was not sustained by the evidence and the presumptions which must be conceded to the report of a Master and the judgment of the lower court."

In *United States v. American Bell Telephone Co. et al.*, 29 Fed. 17, writs were issued to the marshal requiring him to summon the American Bell Telephone Company, reciting that it was a "corporation doing business and found in the State of Ohio." The marshal returned that he had served a writ "on the defendant, the American Bell Telephone Company (which is a corporation doing business and found within the Eastern and Western Divisions of the Southern District of the State of Ohio) by reading the same to A. D. Bullock, the President of the City and Suburban Telephone Company, and delivering to him a duly attested copy thereof (the said City and Suburban Telephone Company being an agent and partner of the said American Bell Telephone Company, within said Southern District of the State of Ohio), on March 24th, 1886. Substantially the same return was made on the summons directed to the marshal of the Northern District. In sustaining a motion to quash these returns Mr. Justice Jackson held that they were insufficient on their face and that the jurisdiction averments in the bill to the effect that the local corporations are the "partners and agents" of the defendant, did not justify the service; that the non-resident partner could not be brought personally before the court upon service upon the resident

partner. It was held that the returns were further irregular and open to the objection that the marshal had not confined himself to a statement of what he did in executing the subpœnas, but states conclusions of law and fact apart from what was done in reciting that the local corporations are partners and agents of the American Bell Telephone Company. In view of the fact that these returns might be amended the Court proceeded to consider broadly the question whether jurisdiction could be obtained over the defendant by any proper service on the facts shown in the bill. The evidence showed that business was carried on in Ohio by the local companies as licensees of the American Bell Telephone Company, and that rentals and royalties were paid to it by such companies at its Boston office. It was held that it did not appear that the Bell Company was doing business in Ohio. With respect to the meaning of the term "managing agent" which must be taken to be convertible with the term "local agent," the Court said:

"The terms 'managing agent' indicate the character of the business the foreign corporation must be engaged in transacting in order to be liable to suit here. They clearly imply the carrying on of the corporate business, or some substantial part thereof, by means of an agent who manages and conducts the same, within the limits of the State, for and on account of the foreign corporation. The business done must arise to the dignity and importance implied by the phrase 'managing agent' in order to come within the operation of the statute. But we cannot understand how a local corporation, as a distinct and legal entity, in carrying

on and conducting the business of telephony in Ohio, for which it was chartered and organized, can be regarded, either in fact or in law, as the 'managing agent' of a foreign corporation in respect to *that same business*. How can the transaction of its *own business* by the local corporation make it the 'managing agent' of another and a foreign corporation having separate and distinct corporate functions? This would be an anomaly in the law. If such relation could exist under such circumstances, its actual existence is positively and distinctly denied by the plea, and is neither disclosed by the contracts nor allleged in the bill. . . . The Bell Telephone Company cannot, therefore, be held or considered as carrying on the business of telephony conducted by the local corporation, and that is the only business done."

The Court said further:

"But it will hardly do to say that the ownership of property in the State is the doing of business here, within the meaning and intent of the law, so as to make the owner personally present."

The Court summarizing its conclusions as follows:

"The various matters relied on to show that the American Bell Telephone Company is to be found in Ohio, and subject to the jurisdiction of this Court,—such as its ownership of the telephone instruments used by the licensee corporations; the ownership of stock in one or more of the local companies; the rights and powers reserved to it of resuming possession of its telephone instruments, and taking control of the telephone business, in the event of default on the part of the licensee corporations in complying with the provisions of the license contracts; the sharing in the gross receipts of certain portions of the business done; the reservation of rents and royalties; the right to make changes; and the restrictions and limitations imposed upon the licensee companies,—neither singly nor in the

aggregate established the two *essential facts* necessary to bring the American Bell Telephone Company within the power and jurisdiction of this Court, viz., that said corporation is now, or was at the commencement of this suit, carrying on its business in the State of Ohio, and that it had a 'managing agent' or agents representing it here."

The case of *A. T. & S. F. R. Co. v. Cochran,* 43 Kan. 225, was an action to recover damages for the death of a passenger on a connecting auxiliary line of the defendant. A recovery was sought against the defendant, the Santa Fe Company, on the ground that it was a stockholder and owned and controlled the Southern Kansas Railway. It was held that the fact that the Santa Fe Company owned the stock of the Southern Kansas Company and exercised such control as a stockholder might lawfully exercise did not make it liable for the death of the passenger caused by the negligence of the Southern Kansas Company. The Court said:

"Under the laws of this State, a railway company has a lawful right to purchase and hold stock of any other railroad company, the line of whose railroad, constructed or being constructed, connects with its own. (*Atchison Rld. Co. v. Fletcher,* 35 Kan. 236.) The stockholders of a railroad company may be said in a certain sense to control, direct and manage the road, but an action for the negligence of the officers, agents or employes of the railroad company must be brought against the Company, not against the stockholders."

No imperfections, if there were any, in the organization of the Texas Company, and no relations, proper or improper, which it sustained to the Rock Island

Company, are chargeable to the Gulf Company. The petition in this case alleges that the Gulf Company is "a corporation duly and legally incorporated and organized under the laws of the State of Texas." It is admitted (Record, 26) that on the 22d day of September, 1903, the Gulf Company purchased the railway of the Texas Company. It is also admitted that the train crews on through passenger and freight trains were handled as they were before such sale, but the testimony of Vice-President Hovey shows that, with this exception, the road in Texas is not operated as it was before the traffic contract between the Rock Island and Texas Company was cancelled. (Record, 48-49.) So far as the testimony shows, the management of the Gulf and Rock Island lines is now absolutely separate and independent. In some instances, for mutual convenience and economy, the same persons are employed in a minor capacity in the service of both companies, but each company controls and pays such employes when engaged in its service. These employes are in no sense joint employes.

There is no evidence as to how or to whom the stock of the Gulf Company was originally issued. A large majority of it stands on the books of the Company in the name of Wm. Wesley Johnson. But it may fairly be inferred from the evidence that he holds it as trustee or pledgee for the Rock Island Company.

In concluding its opinion in the Buie case, the Court said:

"No one of the facts or circumstances in evidence would alone be sufficient to show the Chicago, Rock Island and Pacific Railway Company subject to the jurisdiction of the courts of this State, but the combined force of all these facts and circumstances compel the mind to the conclusion that the chartering of the Chicago, Rock Island and Texas Railway Company was a mere mask under which the Pacific Company carried on its business in Texas."

Buie v. C. R. I. & P. Ry. Co., 95 Tex. 66.

An examination of the opinion in that case will show that the Court, in reaching its conclusion, attached great importance to the traffic contract of Jan. 2d, 1903, and to certain facts respecting the operation of the line of the two companies under that contract, as well as to the manner in which the line of the Texas Company was financed and constructed. This contract was cancelled, presumably, in view of the criticism of the court in the Buie case. As the Gulf Company has never been a party to that contract and has never conducted its business in the manner provided by the contract, the questions presented upon the contract in the Buie case do not arise here. The same may be said of the manner in which the line of the Texas Company was financed and constructed. The Texas Legislature authorized the Gulf Company to purchase that line and it did so, and it does not matter now how or by whom it was constructed; but it may be said, in passing, that there is no evidence that it was not constructed in a legitimate way by the Texas Company.

It seems to be expressly conceded in the Buie case that the fact that a foreign railway company owns a majority of the stock of a domestic company does not, of itself, give the courts of Texas jurisdiction of the foreign company. Eliminating the question of the ownership of the stock of the Gulf Company by the Rock Island Company, there does not seem to be much left in the case at bar upon which to form a contention that the courts of Texas have jurisdiction over the Rock Island Company. There is no evidence tending to show that it has exercised or has attempted to exercise any control over the affairs of the Gulf Company which a stockholder may not lawfully and properly exercise. The little economies which have been practiced by the two companies in the management of their respective properties and the arrangement for the through movement of freight and passenger trains, instead of being wrongful and unlawful, are entirely lawful and proper and are in the interest of the public. No one would be benefited, but the public would be seriously inconvenienced, if each company stopped its trains on the Texas line in the middle of Red River and compelled the transfer of passengers and freight. No wrong is done and no harm is done to anyone by the fact that a train dispatcher located at Chickasha, employed and paid separately by each Company, dispatches trains over the lines of the respective companies, nor is there anything improper in the fact that the Trainmaster,

having separate and independent jurisdiction over a portion of the lines of each of these companies, acts for both of them. The arrangement doubtless tends to the more economical operation of the two lines.

The Circuit Court found the issues of fact and law for the defendant. It is respectfully submitted that in this there was no error, and that the judgment of the Court in dismissing the case for want of jurisdiction ought to be affirmed.

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